

Posted: 11/30/2001

5:00 p.m.

Order 2001-11-19



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 30th day of November, 2001

Served: December 5, 2001

Complaint of

UNITED AIR LINES, INC.

against

**THE EUROPEAN COMMISSION
AND NATIONAL IMPLEMENTING
AUTHORITIES**

under 49 U.S.C. §41310

Docket OST-98-4030 - 47

ORDER GRANTING WAIVER

On July 8, 1998, United Air Lines, Inc., filed a complaint under 49 U.S.C. §41310 against the European Commission (the Commission) and certain European national implementing authorities (the Governments of Germany, Denmark, Norway, and Sweden) (the Commission and these governments are referred to collectively as the Respondents). United argues that sanctions against the Respondents are necessary to redress actions proposed by the Commission against United's alliances with Deutsche Lufthansa AG (Lufthansa) and Scandinavian Airline System (SAS) which will preclude United and its alliance partners from exercising rights specifically provided for under the open-skies aviation agreements between the United States and the individual European countries involved. United argues that such action is essential to ensure the continued viability of the U.S. Government's open-skies policy in Europe.¹

By Order 98-7-16, the Department invited all interested parties to file answers to United's complaint in Docket OST-98-4030. Deutsche Lufthansa AG, Northwest Airlines, Delta Air

¹We summarized the complaint more fully in Order 98-7-16, July 27, 1998.

Lines, Scandinavian Airlines System, American Airlines, the City and County of San Francisco, the City of Chicago and the Metropolitan Washington Airports Authority, and the Economic Strategy Institute filed answers. American and United filed replies. Northwest filed a rejoinder.²

By a series of actions the Department extended, to facilitate a negotiated resolution to the issues raised, the period for taking action on United's complaint.³ The latest extension runs through December 3, 2001.

On November 14, 2001, United offered an additional limited waiver of the statutory deadline through March 3, 2002. United notes that since the filing of its complaint a new Commission is in place and is undertaking a review of the issues that prompted United's complaint. United states that United/Lufthansa/SAS recently provided a proposal to the Commission in an effort to bridge differences on a number of issues, including the question of specific remedies to address the Commission's competition concerns. United further states that it understands that the Commission is negotiating with certain European Union (EU) Member States certain changes to their national laws that the Commission believes will enhance the effectiveness of the private remedies offered by the parties. After a review of parties' comments and negotiations with EU Member States, United states that the Commission and the carriers plan to meet in the near future to continue their settlement negotiations.

However, United states that it does not expect this process to be completed before expiration of the current December 3, 2001, extension of the statutory deadline. In order to afford the Commission and the parties a further opportunity to resolve this matter, United states that it is prepared to waive the statutory deadline in this matter through March 3, 2002.

After careful consideration of United's request and other relevant factors, we believe that the public interest will best be served by granting United's waiver and deferring the deadline for action on the complaint through March 3, 2002.

ACCORDINGLY,

1. We grant the request of United Air Lines, Inc. for waiver of the statutory deadline in order to defer through March 3, 2002, the period for taking action on its complaint in Docket OST-98-4030; and

2. We will serve this order on Air Transport International LLC; American Airlines, Inc.; Amerijet International, Inc.; Arrow Air, Inc., Challenge Air Cargo, Inc.; Continental Airlines.

²Northwest's pleading was accompanied by a motion for leave to file an otherwise unauthorized document. We granted the motion by Order 98-10-7.

³See Orders 2001-8-24, 2001-5-35, 2001-3-3, 2000-12-4, 2000-9-1, 2000-7-22, 2000-4-24, 2000-1-22, and 99-10-22 and orders cited therein.

Inc.; Delta Air Lines, Inc.; DHL Airways, Inc.; Economic Strategy Institute; Emery Worldwide Airlines, Inc.; Evergreen International Airlines, Inc.; Federal Express Corporation; Northwest Airlines, Inc.; Polar Air Cargo, Inc.; Tower Air, Inc.; Trans World Airlines, Inc.; United Air Lines, Inc.; United Parcel Service Co.; US Airways, Inc.; World Airways, Inc.; Lufthansa German Airlines; Condor Flugdienst; Scandinavian Airlines System; Scanair; Maersk Air; Blue Scandinavia AB; Premiair A/S; Nova Airlines, AB; Deutsche BA Luftfahrtgesellschaft mbH; Eurowings Luftverkehrs AB; Hapag-Lloyd Fluggesellschaft; Lufthansa Cargo, AG; Transwede Airways AB; LTU Lufttransport-Unternehmen GmbH; Britannia Airways; Sterling; Air Sweden; Finnair Oy; the Ambassadors of the Delegation of the Commission of the European Communities, the Federal Republic of Germany, Norway, Denmark, and Sweden in Washington, D.C.; the U.S. Department of State (Office of Aviation Negotiations); the Assistant U. S. Trade Representative (Office of the United States Trade Representative); the U.S. Department of Commerce (Office of Service Industries); the Air Transport Association; the National Air Carrier Association, Inc.; the City and County of San Francisco; and the City of Chicago and the Metropolitan Washington Airports Authority.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at
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